

Decision **DRAFT DECISION OF ALJ WETZELL** (Mailed 9/21/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) For Authority to, Among Other Things, Increase Its Authorized Revenues For Electric Service in 2003, And to Reflect That Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

**OPINION ON PETITION FOR MODIFICATION
OF DECISION 04-07-022**

1. Summary

On August 16, 2004, The Utility Reform Network (TURN) filed a petition for modification of Decision (D.) 04-07-022, which resolved Phase 1 of Southern California Edison Company's (SCE) test year 2003 general rate case. At page 252,¹ within the discussion of proposals regarding depreciation, D.04-07-022 refers to the "extensive exercise of subjective and potentially biased judgment by

¹ In its petition, TURN indicates that the phrase at issue occurs at page 260. We attribute this discrepancy to the pagination vagaries of word processing programs. In any event, it is clear that the phrase occurs in Section 9.2 of the decision, in the first sentence, second paragraph of the discussion portion of that section.

the respective [i.e., SCE's and TURN's] depreciation experts." TURN requests that the phrase "and potentially biased" be removed from the quoted passage. This decision grants TURN's petition.

2. Background

The Proposed Decision of the Administrative Law Judge (ALJ) and the Alternate Decision of Commissioner Carl Wood, both of which were issued for comment on February 13, 2004, included "potentially biased" in their respective discussions and in associated findings of fact. In comments that it filed on March 4, 2004, TURN called for dropping this language, stating the following:

"TURN submits that the record in this proceeding firmly establishes that our recommendations are supported by specific and detailed information and, while reflecting our witness' subjective judgment, are not the result of any particular bias, potential or otherwise. The record in this proceeding also firmly establishes the strong possibilities that in future proceedings before other regulatory bodies, TURN's witness is likely to be attacked based on allegations of bias, with prior agency decisions cited as demonstrating such bias. If the Commission believes that a finding of fact labeling the witnesses' judgment as 'potentially biased' is necessary to the outcome adopted on this issue in this proceeding, it should more fully address the underlying basis for that finding. TURN urges the Commission to instead recognize that the end result adopted in this proceeding is more the product of the wide gulf that emerged between depreciation analyses performed by 'experienced and qualified utility depreciation experts,' and to replace the 'potentially biased' language with less inflammatory language in Finding of Fact 213 and the associated text." (TURN Comments, Section II.E.)

The ALJ subsequently revised his Proposed Decision, among other things removing "and potentially biased" from both the discussion and the associated finding of fact. On April 22, 2004, Commissioner Susan Kennedy issued an Alternate Decision that would have authorized some but not all of the

depreciation rate increases sought by SCE. Commissioner Kennedy's Alternate did not include the "potentially biased" phrase in either the discussion section or in any of the associated findings of fact.

3. Discussion

At its July 8, 2004 meeting, the Commission adopted the Kennedy Alternate with important revisions. These included maintaining existing depreciation rates, as recommended in the ALJ's Proposed Decision and the Wood Alternate, rather than adopting the increased depreciation rates that the original Kennedy Alternate would have authorized. TURN submits that in order to reflect this outcome in the final decision, the Commission appears to have cut and pasted the discussion from the depreciation section of either the original Proposed Decision or the Wood Alternate Decision into the Kennedy Alternate. In doing so, the final decision inadvertently revived the "potentially biased" language in the final decision's discussion of depreciation-related issues. However, the associated findings of fact (Nos. 213 and 214 in D.04-07-022) contain no mention of potential bias on the part of any party's witness. In effect, TURN submits that the final decision's revival of the phrase "and potentially biased" was the result of a drafting error in that it used wording from the original rather than the revised Proposed Decision. We agree that the history described by TURN supports this conclusion.

The phrase "and potentially biased" is extraneous to the adopted outcome for depreciation issues, and we therefore decline to adjudicate whether SCE's or TURN's witnesses exercised biased judgment. We conclude that inclusion of the phrase in D.04-07-022 is the result of an inadvertent drafting error that should be corrected. Accordingly, we will order its removal.

4. Comments on Draft Decision

On September 21, 2004, the draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

5. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner. Mark S. Wetzell is the Assigned ALJ for Phase 1 of this proceeding.

Findings of Fact

1. Use of the phrase “and potentially biased” in reference to the depreciation witnesses of SCE and TURN is extraneous to the adopted outcome for depreciation issues.

2. Inclusion of the phrase “and potentially biased” within D.04-07-022 is the result of an inadvertent drafting error and does not reflect the Commission’s intent.

Conclusions of Law

1. It is not necessary to adjudicate whether SCE’s or TURN’s depreciation witnesses exercised biased judgment.

2. The phrase “and potentially biased” should be removed from the depreciation discussion in D.04-07-022.

O R D E R

IT IS ORDERED that:

Decision 04-07-022 is modified by removing the phrase “and potentially biased” from the first sentence of the second paragraph of the discussion for Section 9.2, at page 252. As revised, the sentence shall read as follows:

After reviewing the intricate record on depreciation issues, we are left to conclude that the extensive exercise of subjective judgment by the respective depreciation experts renders their analyses and recommendations unreliable for purposes of ordering major changes in depreciation parameters and expenses.

This order is effective today.

Dated _____, at San Francisco, California.